BRIEF.

In Support of the Preceding Petition for Certiorari.

Note: The Index precedes the petition for certiorari.

All emphasis in this brief is supplied unless otherwise noted.

I.

The Opinions Below.

The opinion of the appellate court below is reported as *Meshberger* v. *Federal Land Bank*, 138 Fed. (2d) 954, and it appears at pages 138 to 142 of the record.

The opinion of the district court, which is not reported, is found in the record at page 71 and the final order of the district court is at page 74.

II.

Grounds on Which the Jurisdiction of this Court Is Invoked.

The basis for the jurisdiction of this court has been set out at page 4 of the preceding petition for certiorari.

III.

STATEMENT OF THE CASE.

Preliminary History.

In 1918 the petitioners gave a mortgage on their farm to the Federal Land Bank, the respondent, to secure a

$9,000 note. They received only $8550 of the loan because they were required to purchase $450 par value of stock in a subsidiary of the respondent, the National Farm Loan Association. This $450 was to be credited on their loan when it was paid. The note and mortgage appear at R. 4 to 10. From the record of payments at R. 6 (together with an additional payment acknowledged at R. 3, paragraph (2)), it is shown that the stipulated payments on the note were made punctually for more than a decade until well after the 1929 crash. In all they paid back to the respondent more money than they received, namely the sum of $8577.63 of which $6620.18 was on interest and $1957.45 was on the principal, leaving a balance yet due of $7042.55. The last payment noted was made in 1933. In addition the petitioners kept the taxes paid on the real estate and paid rental set by the court for more than seven years. R. 61, paragraph 6.

Proceedings for Composition or Extension Under Section 75 (a) to (r).

When the farmer debtor statute was first invoked and for some time thereafter the legislative form and the judicial interpretation of Section 75 were not yet determined and the proceeding was caught in the existing maelstrom of uncertainty.

On October 12, 1934, a petition for composition or extension under Section 75 was filed. A proposal to creditors under Section 75 (a) to (r) failed of acceptance (R. 13).

Proceedings Under Original Section 75 (s).

An amended petition under the **original** Section 75 (s) was then filed. R. 14. An adjudication was entered and the case proceeded under that **original statute** with appraisal, a five year stay order and an order for the payment

of rent. R. 15 to 20. The respondent's first endeavor to obtain a dismissal of the case which occurred at this stage of the proceeding was overruled. R. 18, paragraph 1. **This original Section, 75 (s)** was held to be invalid in *Louisville* v. *Radford*, 1935, 295 U. S. 555, and the proceeding passed out.

Proceedings Under Present Section 75 (s).

Thereafter the **present Section 75 (s)** was enacted and was held valid by this court in *Wright* v. *Vinton*, 300 U. S. 440. The proceeding was accordingly reinstated by order of the bankruptcy court but only for the purpose of ordering the farm to be sold on the application of the respondent. R. 24 to 27. This was the respondent's second attempt to secure a dismissal of the proceeding. The order of sale was reversed on appeal. R. 27 to 28. The opinion in that first appeal is not reported. The three appeals which were taken in this matter are explained in the foot note.[1]

The mortgage holder (respondent here) upon the return of the mandate in the first appeal reversing the order of

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[1] **Concerning Three Appeals in This Matter.**

In order that the various appeals in this case may not be confusing it is well to stop here to explain that there have been three appeals. Only the second and third are involved here.

First Appeal. The order of sale noted above and found at R. 24 to 27 was the subject of the first appeal wherein the order of sale was reversed. The mandate is at R. 27 and 28. This first appeal is not concerned in this present case. The opinion of the appellate court is not reported. This appeal occurred after the bankruptcy courts all over the country had dismissed farmer debtor cases but were stopped by **John Hancock v. Bartels** 308 U. S. 180.

Second Appeal. The second appeal was taken from a subsequent order that the farmer debtor redeem his farm at $6,000 within one year from May 27, 1941. The appeal, number 7871, entitled **Federal Land Bank v. Meshberger**, was taken by the respondent here to that order and is involved in this present case. It is reported in 131 Fed. (2d) 287. The brief of the appellant (respondent here) in that appeal case is set out in the present record at R. 107 to R. 122.

Third Appeal. The third appeal was from the order of the district court denying the application of the petitioners to redeem after the return of the mandate in the second appeal. This is the appeal to which the present petition for certiorari is directed. It is reported at 138 Fed. (2d) 954.

sale petitioned that the property be valued and an order of redemption issued. The petition was granted, redemption at $6,000 being ordered within one year. R. 28 to 32. This was the third attempt by the respondent to terminate the proceeding as to its security.

Both the respondent and the farmer debtors appealed from this order on the same day, August 7, 1941. R. 39, R. 40. The respondent (the mortgage holder) claimed the $6,000 valuation was too low. R. 42. The respondent's argument in that appeal against the valuation appears in the present record under the heading "Second Assigned Error" at R. 116 to 122.

The respondent also claimed the time for redemption was too long. R. 42, paragraph 1. See its argument in that appeal under the heading "First Assigned Error" R. 112 to 116. The farmer debtor's appeal was dismissed. On the respondent's appeal the $6,000 valuation was affirmed. *Federal Land Bank* v. *Meshberger*, 131 Fed. (2d) 287 Appeal No. 7871. R. 58, first full paragraph and the paragraph which follows ending "It is Affirmed".

The Facts Immediate to the Present Action.

On return of the mandate to the bankruptcy court in the Second Appeal, on the valuation and time for redemption, the petitioners applied for the right to redeem at the $6,000 as affirmed by the appellate court, asserting that $6,000 was available but could not be used for redemption pending determination of the amount on the appeal by the mortgage holder (respondent here). They asserted they were entitled to credit on the $6,000 for the par value of the stock they were compelled to purchase in the National Farm Loan Association when the note and mortgage were executed, and also for rent money paid into court. R. 59

to 61. They later paid the full $6,000 cash into the bankruptcy court. R. 94.

The mortgagor holder (respondent here) attacked the petition to redeem by motion to strike it in whole or in part on the grounds that the farmer debtors should have paid in the $6,000 in compliance with the order while its appeal of that order was pending, and also because they asked for credit for the National Farm Loan Association stock and for rent money held by the court. At the same time it answered, repeating its allegations in the motion to strike and asserting that a public sale was its vested right superior to the right to redeem because redemption was not accomplished pursuant to the order by paying in the $6,000 while its appeal of the order was pending. R. 62 to 65.

The bankruptcy court denied the petition to redeem holding that the original order of the bankruptcy court required the $6,000 to be paid within one year and that the appeal by the mortgage holder which had applied for the order did not affect the farmer debtors' duty to pay that sum into court pending determination of the appeal. A trustee was appointed to sell the farm and the National Farm Loan Association stock at public sale at which the mortgage holder, the respondent here, was expressly authorized to bid its full claim, and the rent money was ordered paid to the mortgage holder in so far as not needed for taxes. All net proceeds were ordered paid to the mortgage holder. Opinion: R. 71 to 73. Order, R. 74 to 76.

The petitioners appealed. R. 78 to 89.

Notwithstanding the appeal the respondent proceeded with the advertisement of public sale whereupon the petitioners filed a supersedeas bond and obtained a stay. R. 95 to 100.

Later the respondent not having desisted from advertising a sale, the bankruptcy court issued a specific writ of supersedeas to the respondent and the sale was stopped. R. 126 to 127.

On the appeal the appellate court sustained the bankruptcy court in denying the right to redeem. *Meshberger* v. *Federal Land Bank*, 138 Fed. (2d) 954. R. 143.

It held that the order of the bankruptcy court setting $6,000 as the redemption price was a peremptory final order which expired during the former appeal, notwithstanding that appeal was taken by the respondent-mortgage holder which had sought that order. It held that the mortgage holder, the appellant there which is respondent here, acquired a vested right to a public sale superior to any right of redemption. The Court in the opinion adverted, as it did when *Wright* v. *Logan*, 315 U. S. 139, was before it, to the fact that the farmer debtors had already "had the benefit of two three year moratorium periods", without mentioning the fact that the delays were not the fault of the farmer debtors and they paid rent to the court for many years though the court had no authority to require it.

This petition for certiorari is to obtain a review of the decision just related.

IV.

Specification of Errors.

1.

The bankruptcy court and the appellate court erred in holding that **the farmer debtors' right of redemption was irrevocably extinguished** merely because when the mortgage holder sought and obtained an order setting an amount and time for redemption and then contested that order by

appeal, on the ground that it was erroneous, the farmer debtors did not pay the amount within the time so fixed by the bankruptcy court, notwithstanding the appeal had not yet finally determined the order.

2.

The courts below erred in holding that **the bankruptcy court had no power to permit the farmer debtors to redeem** on the theory that the mortgage holder succeeded to a vested right to a public sale superior and prior to the right of redemption when the time expired for redemption as named in the order of the bankruptcy court, notwithstanding the fact that the order was sought by the mortgage holder and then contested by its appeal, on the ground that it was erroneous, so that the time expired while the appeal remained yet undetermined.

3.

They erred in holding that **the mortgage holder could smother out the farmer debtors' right of redemption** by seeking an order of the bankruptcy court setting an amount and time for redemption and then appealing from that order when issued, on the ground that it was erroneous, so that the time as set in the order expired while the appeal was pending.

4.

The bankruptcy court could not deny to the farmer debtors their statutory right to redeem this farm by paying the amount so fixed by it and affirmed on appeal merely because the time originally set by it had expired while the order was being appealed by the mortgage holder who had sought and obtained it.

5.

They erred in holding that the farmer debtors' right to redeem was irrevocably lost merely because they did not pay the money into court in the amount and at the time set by the bankruptcy court during the mortgage holder's contest of that order by appeal, when the mortgage holder thereafter appeared and litigated in the bankruptcy court the question of credits to be allowed on that amount.

6.

They erred in not allowing to the farmer debtors credit for the par value of stock in the National Farm Loan Association, a subsidiary of the mortgage holder, which stock they were compelled to purchase by deduction from the amount of their loan so that whereas they borrowed and paid interest on $9,000, they actually received only $8550, insolvency of said subsidiary not being an element in the case.

7.

They erred in not crediting to the farmer debtors on their redemption money the amount of rent money paid in by them and still in the hands of the court and collected from them especially so considering that a large amount of rent was paid under a void order while the proceeding was under the original Section 75 (s).

V.

Summary of the Argument.

1. When the bankruptcy court granted the application of the mortgage holder, the present respondent, for an order fixing the amount of money and setting a time for re-

demption, and then the mortgage holder contested the order by appeal, so that the time set in the order passed by, and when the appeal finally determined the amount to be paid the farmer debtors petitioned for the right to redeem at the fixed price and for certain credits, all of which the mortgage holder resisted by litigation,

As consequences thereof:

The farmer debtors' right of redemption was not thereby extinguished.

Nor did the bankruptcy court thereby lose its power over the proceeding so that it could not permit redemption.

Nor could the mortgage holder by such conduct on its part thus deprive the farmer debtors of their right of redemption at the value of the security and take the farm from them by bidding its accumulated claim which had grown to twice that value.

2. The National Farm Loan Association, not being insolvent, and being a subsidiary of the mortgage holder in which subsidiary the mortgage holder required the borrowers to purchase stock to the extent of 5 per cent, that is $450, of the loan and to pay for it out of the proceeds of the loan so that they received only 95 per cent or $8,550 out of the $9,000 loan, which was to be credited on their debt when paid, the borrowers were entitled to such credit upon the redemption price in the farmer debtor proceeding.

3. The farmer debtors were entitled to have credit upon their redemption for rent money held by the Court when the right of redemption accrued, especially so because the bankruptcy court had collected a large amount of rent which it had no authority to receive.

VI.

ARGUMENT.

Preliminary Considerations.

1. The Main Issue.

Did the passing of the time set for redemption during the respondent's litigation extinguish the right of redemption and vest in the respondent a right to a public sale?

Both courts below based the denial of the right of redemption upon the following form of reasoning:

The order of the bankruptcy court required $6,000 to be paid within one year. It was not paid within one year. Ergo, there can be no redemption.

This reasoning is epitomized in the following statements by the courts below:

By the bankruptcy court:

> "The order of May 27, 1941, required the deposit in court of $6,000 within a period of one year from that date." R. 73, middle of page.

By the appellate court:

> "In the first place, the court's order of July 10, 1941, fixing the reappraised value of the property and providing for a one year redemption period was a final order." R. 140, third whole paragraph.

Both courts held that such conclusion was in no way to be modified by the fact that the mortgage holder, although it sought the order, yet considered it erroneous, refused to accept it, and contested it through the district court by petition to review and through the appellate court by appeal, until long after the time set in the order expired.

(In the foot note is a reference to the partial recognition by the appellate court of the correct reasoning.[2])

The Respondent's Litigation of the Order As Erroneous.

The respondent's relation as mortgage holder to the order, which it sought and obtained and then appealed, is here traced through the various documents in the record.

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[2] The supervising conciliation commissioner was ordered by the judge to **"fix such value;** also **to fix a time** in which this debtor shall redeem said real estate." R. 30. The order entered by the supervising conciliation commissioner on May 27, 1941, fixing the time at one year, was thus a final order and the one year for redemption ran from that date. R. 30, at 31, second half of the page. This order was subject to review by the district judge precisely like the order of the judge confirming it (R. 32, order entered July 10, 1941) was subject to review by the Court of Appeals. Whatever reasoning would require a modification of the supervising conciliation commissioner's order of May 27, 1941, because of review by the district judge, would apply with equal force to the review by the appellate court. The respondent has throughout consistently maintained that the year expired May 27, 1942, that is one year from its entry by the supervising conciliation commissioner. See answer of the respondent R. 64, paragraph 4, continuing to top of R. 65. Also its brief in the appellate court, R. 113, paragraph in middle of the page beginning "The valuation". While that (the second) appeal was still pending and before argument the appellant filed in the appellate court a motion entitled "Motion of Appellant to Remand Cause" (which is quoted in full in Note 3, page 27 of this brief) for an order to the district court "for immediate entry of an order of sale with leave to hold its place on the docket of this (appellate) court for determination of (1) the reasonableness of time allowed prior to sale to redeem, and (2) the reasonableness of the market value of the farm in question in the event the lower court refuses to order a sale of said property, **the one year period of redemption having expired** on May 27, 1942." Also as shown above, the district court maintained that the year ran from May 27, 1941, when the supervising conciliation commissioner entered the order. R. 73, middle of page, paragraph beginning "The order". Yet the appellate court held that the year ran not from the entry of the supervising conciliation commissioner's order on May 27, 1941, but from the date when the district judge affirmed that order on review on July 10, 1941. R. 140, middle of page, paragraph beginning "In the first place".

R. 29: **From the respondent's petition for the order, signed by the attorneys for the Federal Land Bank:**

> "That your petitioner believes that in justice to all parties this court should itself fix the value of the property, after proper hearing.
>
> Wherefore **your petitioners pray: That the Court . . . fix and determine the value of the real estate . . . entering an order directing the debtor to redeem the said real estate at the said value so fixed by this court within a stated reasonable time,** not to exceed ninety (90) days . . ."

R. 30. **The judge referred the motion to the supervising conciliation commissioner "to fix such value; also to fix a time at which this debtor shall redeem".**

R. 30 and 31: **From the order of the supervising conciliation commissioner granting the petition of the respondent:**

> "This cause coming on to be heard upon the verified **petition filed** jointly **by The Federal Land Bank of Louisville,** Kentucky, and the John Hancock Mutual Life Insurance Company, **asking to have the value of the real estate** upon which the above petitioners hold a lien, **fixed** by hearing, **and a time for redemption, ordered,** that said petition having been heard . . . the court now finds that: . . . As to the real estate upon which the Federal Land Bank of Louisville, Kentucky, holds a lien consisting of 120 acres, more or less, that **the value** thereof **is fixed at $6,000, that a reasonable time** within which to redeem said real estate **is fixed at one year** from the date of this order. . . . Dated this 27th day of May . . . 1941."

R. 32: **A petition for review of the supervising conciliation commissioner's order was filed by the respondent** which

is not set out in the record but the order of the judge of the district court on review shows:

. . . "**petition of Federal Land Bank to review denied.** Order of Supervising Conciliation Commissioner confirmed. July 10, 1941."

R. 40: **From the respondent's notice of appeal** (this was the Second Appeal):

"Notice is hereby given that **The Federal Land Bank of Louisville . . . appeals** from a certain order entered in this cause by this Court on the 10th day of July, A. D. 1941" . . .

"**The appellant believes** that by reason of the entry of said order, **certain errors were committed** by the Court to the prejudice of the appellant, all of which will in more detail appear in the appellant's points of alleged error, which is filed with and accompanies this notice."

R. 42: **From the respondent's Statement of Points of Alleged Error on the Second Appeal:**

"1. **The Court erred in denying the petition of the Federal Land Bank** of Louisville to review the report and order of the Supervising Conciliation Commissioner and in confirming the order of the Supervising Conciliation Commissioner, **because the time given in the record and order** of the Supervising Conciliation Commissioner in which the Debtor could redeem **was not reasonable, being too long.**

2. **The Court erred in denying the petition of The Federal Land Bank** of Louisville to review the report and order of the Supervising Conciliation Commissioner and in confirming the order of the Supervising Conciliation Commissioner, **for the reason that said report and order** of the Supervising Conciliation Commissioner **fixed too low a valuation** upon the real estate.

Wherefore the said **The Federal Land Bank** of Louisville **prays:**

That the judgment be reversed and for such other relief as to the court may seem fitting and proper."

R. 43: **From respondent's bond on the Second Appeal:**

"Whereas the above named **The Federal Land Bank** of Louisville **has prosecuted an appeal** to the Circuit Court of Appeals for the Seventh Circuit **to reverse an order** in the above-entitled cause, . . ."

R. 44: **From the order of the District Court allowing the Second Appeal of the respondent:**

"This cause being before the court on **the notice of and petition for appeal** in the above cause . . ., statement of points of alleged error, bond, and designation of portions of the record, proceedings and evidence to be contained in the record on appeal, all **filed by the petitioner Creditor, The Federal Land Bank** of Louisville," . . .

R. 108: **From the brief of the appellant (respondent here) in that Second Appeal** which appears in the present record of the Third Appeal:

"In the United States Circuit Court of Appeals for the Seventh Circuit, No. 7871 . . . **The Federal Land Bank of Louisville, Appellant,** vs. Rufus Meshberger, Appellee. Appeal from the District Court of the United States for the Northern District of Indiana . . . Appellant's Brief . . . The appeal is taken from an order of the court below, fixing the value of the property and giving the debtor a year in which to repurchase the property . . . **Appellant asserts that the value fixed was too low, that the granting of a year . . . was improper**" . . .

R. 110: Quoting further from the brief of the appellant, respondent here, in that Second Appeal:

"The sole issues presented by this appeal arise from the exceptions and petition to review filed by the appellant, The Federal Land Bank of Louisville to the report and order of the Conciliation Commissioner based on two grounds:

(1) That the report and **order was erroneous in giving the debtor a year from the date of the order in which to redeem the real estate** at the appraised price; and,

(2) That **the valuation in the report and order was too low** and did not represent the proper valuation of the real estate.

The action of the Court below, in overruling these exceptions and petition to review, is the error complained of in this appeal . . ."

R. 116: Quoting still further from the brief of the appellant, respondent here, in that Second Appeal:

"The court erred in denying the petition of the Federal Land Bank of Louisville to review the report and order of the Supervising Conciliation Commissioner, for the reason that the said report and **order of the Supervising Conciliation Commissioner fixed too low a valuation upon the real estate.**"

R. 117 to 122 inclusive: Then follow five and a half pages of argument to support the contention of the appellant, here the respondent, in that Second Appeal, that the valuation was erroneous and should be increased. Just before the Summary of its argument the brief at R. 122 says:

"**The valuation** fixed by the Supervising Conciliation Commissioner **was clearly erroneous,** being too low, and **the order of the District Court, affirming the ruling of the Supervising Conciliation Commissioner as against the petition to review, should be reversed.**"

"Motion of Appellant to Remand Cause" [3] In the appellate court on October 9, 1942, before the Second Appeal was decided, and long after the year named in the original order had expired, the appellant, now respondent here, filed its "Motion of Appellant to Remand Cause", in the Second Appeal, to remand the case to the District Court for immediate sale of the farm with leave to hold its place on the docket of the appellate court for determination of "(1) the reasonableness of the time allowed prior to sale to redeem, and (2) the reasonableness of the market value of the farm in question in the event the lower court refuses to order a sale of said property."

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[3] As to this "Motion of Appellant to Remand Cause" it seems that it was intended to designate it into the present record but was omitted by oversight. It was set out verbatim in the petitioner's brief in the appellate court on the **third** appeal with the statement that if its authenticity was questioned it would be made a part of the record. It was not questioned. As it appeared at page 31 of the Meshberger brief in the appellate court on the **third** appeal it read as follows:

"IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit

In the Matter of Rufus Meshberger, et al., Debtor,

Federal Land Bank of Louisville,
Appellant,

vs.

Rufus Meshberger and Lelia B. Meshberger,
Appellees.

Motion of Appellant to Remand Cause.

Comes the Federal Land Bank of Louisville, and moves the Court to remand this cause to the United States District Court for the Northern District of Indiana, Fort Wayne Division, for immediate entry of order of sale with leave to hold its place on the docket of this Court, for determination of (1) the reasonableness of the time allowed prior to sale to redeem, and (2) the reasonableness of the market value of the farm in question in the event the lower court refuses to order a sale of said property, the one year period of redemption having expired on May 27, 1942, and redemption not having been made.

(Signed) Theo. W. Bates
(Signed) J. W. Williamson
Attorneys for Federal Land Bank of Louisville."

A Resume of the Facts on This Point.

The foregoing extracts from the record just quoted show:

1. The respondent petitioned for an order.
2. The respondent's petition was granted.
3. The respondent petitioned for a review of that order.
4. The respondent's petition for review was denied and the order was sustained.
5. The respondent appealed.
6. The respondent maintained its contest of the order throughout the appeal.
7. The order was finally sustained on the appeal against the objections of the respondent.

That is, the respondent asked for an order, got it, then contested it by appeal through two courts and the time set for compliance with that order expired before the appeal was determined.

An Examination of the Reasoning of the Courts Below.

The holding of the lower courts that the order to pay within one year was as immutable as the law of the Medes and Persians disintegrates when an attempt is made to put it to work.

1. It broke down within the appellate court itself which ostensibly applied it as has been demonstrated in Note 2. That court held that the order of May 27, 1941 (R. 30 at 32) ran **not from its entry but from its affirmance** on July 10, 1941, after decision by the judge on petition for review. R. 32. The assumed immutability was shattered right there.

2. If the order were really immutable, it must withstand all possible uncertainties of the litigation in the appellate court. By that test if the $6,000 had been paid within a year, the farmer debtors were by statute entitled at once

to an order freeing the farm of all liens, for the statute says:

> . . . "The debtor shall then pay the value . . . into court . . . and **thereupon the court shall,** by an order, **turn over** full possession and title of **said property, free and clear of all encumbrances** to the debtor." Section 75 (s) (3).

That is, thereby the respondent's lien would have been obliterated. Yet on final determination the appellate court might have held the $6,000 to be too small or the time too long. Then there would have existed a direct conflict between the judgment and a statute which the Constitution says shall be the supreme law of the land.

The theory supporting such reasoning raises interesting questions. For example:

Query: What would have been the result if the order as finally determined set the time for 90 days, but the redemption had already been made pursuant to the original entry after ninety days but within the year? or,

Query: What would have been the result if the order as finally determined (in the appellate court or elsewhere) fixed the valuation at $7,500 but the redemption had already been made pursuant to the original entry within time by paying $6,000?

The conclusion forces itself upon any consideration of the subject that when the respondent appealed from a judgment in its favor, it could not, after its appeal was determined, change its tactics by insisting that after all the appellee should have complied with the order which it contended with all its might was erroneous. To permit one to appeal from an order granted upon his application which he contests as erroneous, and afterwards when his appeal is decided against him, to claim the order should have been obeyed while he endeavored to overthrow, it is against all conceptions of common sense.

Conflict with the Rule Recognized by This Court.

Indeed this court has already spoken sharply on the subject, it said:

> "**They having appealed from the decree, it would be against all reason and principle to permit them to proceed in the execution of it, pending the appeal. They assert that the decree is founded in error and for that reason should not be executed, but should be reversed and corrected in the appellate tribunal.** The appeal suspends the execution of the decree. This is not a case where security is to be given in order to supersede the execution. That rule applies in cases where the decree or judgment is against the party appealing, and who desires to suspend the issuing of execution by the adverse party until the appeal is heard and determined." *Bronson* v. *LaCrosse*, 68 U. S. (1 Wall.) 405.

In that case the appellant appealed from a decree of foreclosure and applied to the lower court for the proceeds of the operation of the security, a railroad, during the pendency of the appeal. The rule of this case has been uniformly recognized.

It is recognized in 6 Cyclopedia of Federal Procedure, page 341, where it is said:

> "Unless the decree or judgment is one capable of execution by appellee pending the appeal, there is no reason or need for a supersedeas. Accordingly one appealing from a decree or judgment in his own favor supersedes it by so appealing, and can not execute it; and the subsequent taking of a cross-appeal does not alter the case."

The decisions of the courts below are also in conflict with other applicable decisions of this court:

Reconstruction v. *Prudence*, 1941, 311 U. S. 579,
Manufacturers v. *Prudence*, 1941, 312 U. S. 649,
Endelman v. *Prudence*, 1941, 312 U. S. 649,

Kelby v. *Prudence*, 1941, 312 U. S. 649,
Prudence v. *Prudence*, 1941, 312 U. S. 649,
Davison v. *Prudence*, 1941, 312 U. S. 649,
Denham v. *Munson*, 1941, 312 U. S. 650.

In the *Prudence* and *Denham* cases the appellants were confused by the provisions of Section 24 (b), and 250 of the Bankruptcy Act, 11 U.S.C. 47 (b) and 650, and Rule 73 (a) of the Federal Rules of Civil Procedure and General Order 36. These provisions had been construed in one court to permit appeal as a matter of right by notice in the District Court and by another as requiring allowance by the appellate court upon application to it. The appellants guessed wrong and took their appeal by notice in the district court in accordance with the holding of their Circuit Court of Appeals. Long after the time for appeal had expired the court decided that such an appeal by notice in the District Court was void.

Now there was no excuse for the failure of the appellants in these seven cases to appeal the right way because for many years a similar confusion existed under the Bankruptcy Act of 1898 which was met by the simple expedient of taking an appeal in the district court and at the same time applying to the appellate court for leave to appeal. These appeals were called "alternative appeals." However this court held that it would be extremely harsh to deprive the appellants of their rights and reversed the appellate court which had dismissed the wrongly taken appeals. The confusion, although created by the legislative and judicial departments of the government, could have been easily resolved by the appellants through the employment of a long-recognized remedy. The appellees were guiltless of any part in creating the confusion.

On the other hand the confusion in the instant *Meshberger*

case was wholy created by the appellant, the present respondent, through its appeal of an order sought and obtained by it which it contended was erroneous. The petitioners had no part in creating the dilemma but they were helpless. There was no expedient they could employ.

The only answer to their plea is the harsh one that they should not have to borrow, they should have had the cash in their pockets. If they had possessed so much ready cash they would not have had to invoke Section 75 as farmer debtors who were unable to meet their debts as they matured. Section 75 (c). But as shown under the heading "Some Practical Considerations" which follows, even the payment of the required $6,000 within the time as set by the bankruptcy court would have been futile if the appellate court had held the $6,000 too small or the payment too late.

Some Practical Considerations.

Aside from its violation of the principles of jurisprudence the basis of the holding of the lower courts breaks down when subjected to the "practical experience of the world."

As a preliminary consideration it will be recognized that no reasonable person can assume that Section 75 contemplates a redemption solely with funds earned by the farmer debtor during the pendency of the proceeding under it. It is based on the assumption that with (1) what he can earn plus (2) what he can borrow he (3) can redeem his farm at its **value.** Unless these three factors coexist he is as stranded when he comes out as he was when he went in. If he can not borrow on the value of his security and by adding the proceeds of the loan to his earnings redeem his farm at its value, **the purpose of the statute is thwarted by**

giving to the secured creditor the farm instead of its value which is all he is entitled to. This was epitomized in *Wright* v. *Union Central*, 311 U. S. 273, at page 278, where this court said:

> "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt. *Wright* v. *Union Central Life Ins. Co.* [304 U. S. 502]; *John Hancock Mutual Life Ins. Co.* v. *Bartels*, [308 U. S. 180]; *Kalb* v. *Feuerstein*, 308 U. S. 133. **Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property.** *John Hancock Mutual Life Ins. Co.* v. *Bartels*, at pp. 187-188; *Borchard* v. *California Bank*, [310 U. S. 311], page 317. **There is no constitutional claim of the creditor to more than that.** And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress (*John Hancock Mutual Life Ins. Co.* v. *Bartels*, [308 U. S. 180]; *Kalb* v. *Feuerstein*, [308 U. S. 133]) lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

The theory applied by the courts below required the petitioners, under penalty of forfeiture of their right to redeem, to apply for a loan to make up enough money to meet the order that $6,000 be paid within one year and to do so during the contest of that order by the mortgage holder on the ground that it was erroneous both as to amount and as to time.

Under that hypothesis let it be assumed that they go

out in the practical world of business and apply for the necessary sum. The lender investigates the characters of the applicants and examines the farm. He notifies them that he will make the loan when satisfactory evidence of title is presented. Thereupon their abstract of title is brought up to date and examined. He tells them it shows an order to pay the $6,000 by May 27, 1942, but also that the order has been appealed by the present mortgage holder who claims the $6,000 is too low and the one year is too short. They say "Yes, but we intend to comply with that order before it expires". His answer is "If I let you have the money and you pay the $6,000, both you and I are headed for trouble because the appellate court may hold the $6,000 is too low, or it may hold that one year is too long. I am sorry I can't make the loan, because I am not satisfied it would be a good one."

But, says the present mortgage holder, respondent here: "That is readily solved. Let the $6,000 lay in the District Court until the appellate court decides". The lender replies, "Yes, but the statute says when the $6,000 is paid in 'thereupon the court shall by an order' turn the farm over to the owners. How am I to know whether the court will or will not follow the statute? With my money in court, no matter what the court does, how am I to get my money back if the $6,000 is the wrong sum or the time when it was paid was too late, according to the decision of the appellate court that is yet to come? We will have to wait until the case is decided."

Bereft of all other arguments the mortgage holder, our respondent, now says "Yes, but what about 'good faith'? They showed lack of good faith by not complying with the order". Coming from the mouth of an appellant who, all

the time the order ran according to its original wording, was strenuously arguing that the order was erroneous both as to amount and as to time (see R. 112 to 122) this argument is not convincing. The petitioners showed their good faith in the only way it could be shown. When the Second Appeal was ended they got a commitment for a loan as high as $6,000 from a Bank. R. 61, paragraph 6. R. 101, middle of the page. And they paid $6,000 into the district court while the third appeal was yet pending in the district court. R. 94.

There is yet another practical demonstration of the effect of the mortgage holder's attack on the order and of the "good faith" of the petitioners. It will be noted that the very order attacked by the respondent here also contained an order for redemption of 70 acres mortgaged to another mortgage holder to be redeemed at $3,000 within six months. R. 30, paragraph I and also in paragraph II. It is a fact, which the respondent will not deny, that the $3,000 mortgage holder did not attack the order and that redemption was effectuated promptly.

If Jurisdiction Had Expired, Respondent Restored It.

After the mandate came back to the bankruptcy court in the Second Appeal the petitioners then apprised the court that they had the $6,000 available for redemption (which they later paid into court, R. 94) and requested that they be permitted to redeem and also asked for credit for their National Farm Loan Association stock and for rent money held by the court. R. 59. The respondent immediately contested the right to any such credits. R. 63, (2) and (3), at top of page, R. 63, at R. 64, paragraphs 2 and 3. There-

by the respondent recognized that the case was still open for redemption.

If the holding of the courts below and the arguments of the respondent which prevailed there are to be interpreted to mean that the bankruptcy court which had complete jurisdiction and power over the right of redemption lost them merely because the time for redemption set by it was passed over while the respondent was contesting the validity of the order, then the respondent itself revived or restored that jurisdiction and power by coming back into the bankruptcy court and litigating there the mode or method of redemption as distinguished from the power or jurisdiction of the court. When it plead and argued that it was entitled to the full $6,000 without deduction for National Farm Loan Association stock or rental payments it restored, rather it conceded, the court's jurisdiction and power over the right of redemption. It plead to the merits and thereby waived objection to the restoration of the jurisdiction which the court once had. This principle is of ancient lineage.

"If the court once have jurisdiction of a cause and have exercised it so that their power is gone, consent can restore it" 12 American and English Encyclopedia of Law, page 299. *Toland* v. *Sprague*, 37 U. S. (12 Peters) 300. 93 A. L. R. 1302.

In recapitulation it is submitted that because the respondent obtained an order setting the amount and time for redemption which order the respondent immediately

attacked as erroneous, and litigated by its petition to review and by its appeal until long after the time named in the order had passed, the decisions of the courts below are in conflict with the applicable decisions of this court, and a departure from the accepted and usual course of judicial proceedings as well as repugnant to the letter and the purpose of the statute.

The right of redemption was not extinguished because the time named for redemption passed by during the litigation. Nor did the bankruptcy court lose its power to permit the redemption.

Nor could the mortgage holder by the expedient of seeking the revocation of the very order it sought on the ground that it was erroneous, create in itself a vested right to take the farm by bidding its debt superior to the right of the farmer debtors to redeem it at its value.

We pass to the other points to be discussed.

2. N. F. L. A. Stock.

Do the petitioners as borrowers from the respondent, a Federal Land Bank, have the right to credit on their loan of par value of stock in the National Farm Loan Association, the subsidiary through which they obtained their loan from the respondent, and to which stock they were required to subscribe to pay for out of the amount of their loan? They borrowed and paid interest on $9,000 but received only $8,550 because 5 per cent or $450 of the loan was taken to purchase stock in the subsidiary of the respondent. By contract the Federal Land Bank was bound to refund the $450 when the loan was paid unless the Na-

tional Farm Loan Association was insolvent. There is no claim that the National Farm Loan Association was or is insolvent.

The petitioners asked for credit for the par value of their stock pursuant to their contract. R. 61, paragraph 6.

In *Knox* v. *Phillips,* 1937, 300 U. S. 194, this court held that if the National Farm Loan Association be insolvent the Federal Land Bank is not bound to credit such stock on the loan when paid. Insolvency is not involved here.

Section 75 (s) (3) provides explicitly that when the farmer debtor pays into court the appraised, or reappraised value "thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of all encumbrances to the debtor". This court has held that the mortgage holder is protected to "the extent of the value of the property and there is no constitutional claim of the creditor to more than that". *Wright* v. *Union Central,* 311 U. S. 273, at page 278.

The respondent withheld $450 from the petitioners when the loan was made so that they actually borrowed $8550, not $9,000. If the $450 is not refunded then whose money is it? If the respondent is to keep it thereby the provision of Section 75 (s) (3) is amended to read: When the appraised, or reappraised, value is paid into court "thereupon the court shall turn over full possession and title to the property free and clear of all encumbrances to the debtor except when he is a borrower from a Federal Land Bank which shall be permitted, in addition to the said value, to retain any stock subscriptions in any subsidiary."

The mechanics of this 5 per cent stock purchase is that when the borrower pays his 5 per cent to the National Farm Loan Association he is issued stock in that associa-

tion of equal par value and the National Farm Loan Association subscribes to an equal par value of stock in the Federal Land Bank. Thus the Federal Land Bank took interest from the borrower on $450 while it kept the $450 to use in its business. It insists that when the loan is paid under Section 75 it may keep on keeping the $450.

The petitioners submit that this question, which has not been passed upon by this court, should be determined, and they claim they are entitled to credit on their redemption in the sum of $450 which the Federal Land Bank now has.

We pass to the third point.

3. Rent Money.

What disposition is to be made of the rental money remaining in the hands of the court at redemption?

The farmer debtors paid rent to the court, not only under the present Section 75 (s) but prior to its existence, while the invalid original Section 75 (s) was being followed. They alleged, and there is no controversy on the fact, that they "have kept the taxes paid on the real estate and have paid the rental fixed against said land for over seven years".

As between the respondent which has received the benefit for seven years of rental, at least four years of which was illegally demanded—for Section 75 (s) (2) authorizes rent to be charged for only three years—and the petitioners who paid the money, the equities would seem to

lie with the petitioners that the money lying in the lap of the court when redemption is consummated, should be credited on the redemption.

This question also the petitioners submit has not been determined and should be passed on by this court.

CONCLUSION.

Therefore it is submitted that:

> " . . . to hold that the court has the discretion to deny or to grant the debtor's right to redeem at the reappraised value or at the value fixed by the court, dependent on general equitable considerations, would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate." *Wright* v. *Union Central*, 311 U. S. 273, at page 281.

The decisions below involve important questions relating to the administration of an act of Congress which have not been finally determined.

They are in conflict with applicable decisions of this court.

They depart from the accepted and usual course of judicial proceedings and call for the exercise of this court's power of supervision.

They are in conflict with the provisions and with the spirit and purpose of Section 75 of the Bankruptcy Act.

They deny to the farmer debtors the application of equitable principles to the situation directly created by the mortgage holder.

They call for the broad power of this court to make such disposition of the case as justice requires.

The petitioners have therefore prayed in their petition that certiorari be granted.

Respectfully submitted,

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Lima, Ohio
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